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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/657,301 | 09/08/2003 | Jayne Nagy | SMB-6729 | 9772 |
| 26294 | 7590 | 10/25/2004 | EXAMINER | |
| TAROLLI, SUNDHEIM, COVELL & TUMMINO L.L.P. 526 SUPERIOR AVENUE, SUITE 1111 CLEVEVLAND, OH 44114 | | | REDDING, DAVID A | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1744 | |

DATE MAILED: 10/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|------------------------------------|-------------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/657,301 | NAGY ET AL. |
| | Examiner David A Redding | Art Unit 1744 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 12-20 is/are allowed.
- 6) Claim(s) _____ is/are rejected.
- 7) Claim(s) 6 and 9-11 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities: page 8, the pivot bar is mis-identified as "100" and should be "102".

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by USP 4,105,412 (Petzinger).

Petzinger discloses a compost container comprising a hollow container (14) with a top end, bottom end and sidewall therebetween, the top end having an opening for loading the container, the bottom end including a discharge opening (30), a removable top cover (16), and an ornament (46) in the form of a handle. The screws or bolts for attaching the handle to the cover constitute a corresponding connection portion and the through-holes in the cover constitute the connection portion of the cover. The claim limitation "ornament" is being interpreted based on the dictionary's given meaning "as something added to improve or enhance the appearance". It is the examiners opinion that the handle is not needed to remove the cover but does improve the appearance of the container at the same time making removing the cover easier.

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Des. 332,678 (Barclay et al.).

Barclay et al. shows a compost container which comprises a four-sided container, a lid on top of the container having an ornamental handle having a connection portion which mates with the surface of the lid, at the top of the container is an opening for loading the container with compost and the bottom end having a door with handle for removing the compost from the container.

Claim 8 is rejected under 35 U.S.C. 102(b) as being anticipated by Des. 351,697 (Blotnick).

Blotnick shows a compost bin having a clearly shown lid covering the top opening of a four-sided container. Figure 1 shows two of the sidewalls, with the sidewall on the left having 5 panels the bottom panel having ventilation openings and being in a tiered relative position to the upper adjacent panel. The sidewall on the right shows the bottom panel as an access panel being movable to a second position allowing access into the container.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over USP 4,105,412 (Petzinger) in view of USP 6,518,057 B2 (Morrison).

Petzinger is silent as to a cover pivotally attached to the container. The patent to Morrison shows a circular container having a cover (6) which is shown as being pivotally attached by hinge pin (46) to the container and operates as claimed. It would have been obvious to one skilled in the art that the cover (16) in the Petzinger container can be pivotally attached as shown by the functionally equivalent cover/hinge shown in Morrison.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Des. 332,678 (Barclay et al.) in view of US patent 5,118,005 (Onodera).

The Barclay et al. patent does not show a pivotally attached cover. The Onodera patent shows a composter having a cover (23) which is shown as being pivotally attached by hinge (24) to the container and operates as claimed. It would have been obvious to one skilled in the art that the cover (16) in the Petzinger container can be pivotally attached as shown by the functionally equivalent cover/hinge shown in Onodera.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over USP 4,105,412 (Petzinger) in view of USP 6,218,177 B1 (Nattrass).

The Petzinger patent is silent as having fixed feet attached to the bottom of the container. The Nattrass patent discloses a circular composter having legs (7) which are attached to the bottom (2) of the container (1). It would have been obvious to one skilled in the art to provide legs to the bottom of the composter in the Petzinger patent in order to raise the height of the container for improved handling of the container in view of the known practice as shown in the Nattrass patent.

Allowable Subject Matter

Claims 6, 9-11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 12-20 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

The prior art of record fails to teach or suggest a composting device comprising a sidewall including an inner side panel having openings for ventilation, and an outer side panel for attachment to said side panel.

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The US design patent to Zeyha et al. shows a composter having a lid with an ornamental handle in the form of a squash stem.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A Redding whose telephone number is 571-272-1276. The examiner can normally be reached on Mon.-Fri. 6:00 - 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Warden can be reached on 571-272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>.
Should you have questions on access to the Private PAIR system, contact the
Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D.A.R.



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